



Memorandum

February 26, 2007

TO: Senator Byron L. Dorgan
Attention: Gabriel Adler

FROM: Kristina Alexander
Legislative Attorney
American Law Division

SUBJECT: Managing Wildlife in Theodore Roosevelt National Park

You asked whether people other than National Park Service employees could be used to manage the elk herds in the Theodore Roosevelt National Park in North Dakota. The elk herds have doubled in size every three years since being re-introduced into the park in 1985 (69 Fed. Reg. 53087 (Aug. 31, 2004)).

Hunting in the Theodore Roosevelt National Park is not authorized by statute. Under National Park Service (NPS) regulations, hunting is allowed only where specifically provided by statute (36 C.F.R. § 2.2(b)). According to the U.S. Supreme Court, unless Congress has directly spoken to the precise question at issue, deference is afforded to a Secretary's judgment that a particular regulation fits within its statutory constraint.¹ Therefore, unless 36 C.F.R. § 2.2(b) is found to be arbitrary and capricious by a court, it is presumed enforceable. Because the enacting legislation for Theodore Roosevelt National Park does not specifically authorize hunting, it appears that hunting is not allowed (16 U.S.C. § 241 et seq.).

Despite the apparent ban on public hunting, NPS has additional policies regarding wildlife management that are relevant here. NPS policies allow for "management" of wildlife under certain circumstances, including when "a population occurs in an unnaturally high" concentration due to human influences, and it is not possible to mitigate those influences (2006 Management Policies, § 4.4.2). Where human activities cannot be modified or curtailed, NPS may manage animal populations to reduce their size by relocation, public hunting where authorized, habitat management, predator restoration, reproductive intervention, or destruction of animals by NPS personnel or their authorized agents (2006 Management Policies § 4.4.2.1).

¹ Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-44 (1984).

You have asked whether non-Park Service personnel may be used to thin the elk herds in the Theodore Roosevelt National Park once NPS has determined such action is necessary. The policies allow people other than NPS personnel to take such action. Section 4.4.2.1 states that “authorized agents” of the NPS are allowed to manage animal populations. This provision contemplates NPS authorizing those people having the necessary qualifications to act under the circumstances, and could include individuals not otherwise connected with the Federal government.

I trust that this information meets your needs. If you have questions or need additional information, please feel free to contact me at (202) 707-8597.